IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10678 of 2003

with

SPECIAL CIVIL APPLICATION No 10838 of 2003

with

SPECIAL CIVIL APPLICATION No 10839 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VARCHAND JETHALAL BECHARBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10678 of 2003

MR HARIN P RAVAL for Petitioner No. 1-4

MR S.N. SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 1

MR JASWANT K SHAH for Respondent No. 2

2. Special Civil Application No. 10838 of 2003

MR HARIN P RAVAL for Petitioner No. 1

MR S.N. SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P.

for Respondent No. 1
MR JASWANT K SHAH for Respondent No. 2

3. Special Civil Appliction No. 10839 of 2003
MR HARIN P RAVAL for Petitioner No. 1
MR S.N. SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P.
for Respondent No. 1
MR JASWANT K SHAH for Respondent No.2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. As all the three petitions are involving similar legal issues, at the request of the learned advocates, they are heard together.

2. RULE in each of the petitions. Learned Advocate General Shri S.N. Shelat, appearing with learned A.G.P. Ms. Maithili Mehta, waives service of rule in each of the petitions for respondent no.1, whereas learned advocate Shri J.K. Shah waives service of rule, in each of the petitions, for respondent no. 2.

3. The facts giving rise to the aforesaid three petitions, in a nutshell, are as under:

4. The petitioners of all the petitions, are having right and interest in a building named 'Patel wadi', Salari Naka, situated on land bearing Survey No. 467 at Rapar. Petitioners nos. 1 and 2 of Special Civil Application No. 10678/2003 are owners of shops nos. 1, 2, 3 & 4, which are on the ground floor of the said building and they also own two flats bearing panchayat house no.29/73 at the first floor of the said building. Sofar as petitioners of Special Civil Application Nos. 10838 and 10839 are concerned, they are owners of one shop each on the ground floor of the said building.

5. The building referred to hereinabove is abutting a 40 feet wide Chitrod-Dhora Vira Road as per the development plan. The width of the said road is to be increased to 18 meters and, therefore, it has become necessary for the respondent authorities to take possession of a portion of land, which is abutting the 40 feet wide Chitrod-Dhora Vira Road road.

6. The petitioners' apprehension is that without following any legal procedure, the respondent authorities might take possession of the building, wherein their properties are situated and, thereby their right would be adversely affected.

7. It has been submitted by learned advocate Shri Harin Raval appearing for the petitioners in each of the petitions that the petitioners had made a representation to the effect that, instead of having 18 meters wide road, if 15 meters wide road is constructed, possibly the petitioners would not be much affected. It has been further submitted by him that the respondent authorities are likely to acquire or take possession of the land only from one side of the center of the road and, therefore, their whole building with the land might be acquired. According to him, land should be acquired from each side of the road, so that less portion of their land might be acquired by the authorities.

8. It has been submitted by the learned advocate that being aggrieved by the proposed action of the respondent authorities, a representation had been made by the petitioners, but the said representation had been turned down by respondent no. 2. It has been submitted that when the draft development plan had been published, some objections in relation to width of the road had been submitted, but all the objections had been turned down and now it has been decided to have a road of 18 meters width, as proposed in the draft development plan.

9. In pursuance of notice issued by this Court, learned advocate Shri J.K. Shah appearing for respondent no. 2 has submitted that all the objections pertaining to the width of the road had been duly considered by respondent no. 2 and after having careful consideration, a decision was taken with regard to the width of the road as reflected in the development plan.

10. It has been further submitted by him that the apprehension of the petitioners that their land shall be acquired or the building shall be demolished without following legal procedure is not well founded. It has been submitted by him that necessary procedure as required under the provisions of Sections 20(1) of the Gujarat Town Planning and Urban Development Act, 1976 is being followed and necessary notification under the provisions of Sections 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") have also been issued. It has been very fairly submitted by him that these petitions had been filed at an earlier point

of time and the aforesaid notifications under the provisions of the Act had been issued after the filing of the present petitions.

11. Thus it has been submitted on behalf of the respondents that except in accordance with law, the petitioners' property is not going to be demolished or possession of the land, on which the building of the petitioners is constituted, is not be taken by the concerned authority.

12. It has been submitted by learned A.G.P. Ms. Maithili Mehta that urgency clause under Section 17(4) of the Act has also been invoked so that possession of the property acquired can be taken by the concerned authority immediately.

13. It has been submitted on behalf of the respondents that the work with regard to widening of the road is required to be done immediately because the State of Gujarat is likely to get financial aid from other bodies on a condition that the work is completed within a particular time limit.

14. Looking to the facts of the case, and in view of the fact that after filing the petitions necessary notifications under the provisions of the Act have been issued, it has been submitted by learned advocate Shri Harin Raval appearing for the petitioners that the petitioners would like to make a representation to respondent no.1 so that the averments made in the petition in favour of having 15 meters wide road can be reconsidered by respondent no.1. It has been submitted by him that if some time is granted to the petitioners for making a representation, no harm would be caused to the respondent authorities. In the circumstances, it has been prayed that respondent no. 1 be directed to consider the contents of Special Civil Application No. 10678/2003 so that, if thought proper, the decision regarding width of the road can be reconsidered by respondent no.1

15. Looking to the facts of the case, it is directed that respondent no.1 shall look into the contents of Special Civil Application No. 10678/2003 as soon as possible and preferably within a period of seven days from the date of receipt of this order by respondent no.1 and shall take appropriate decision and convey the same to one of the petitioners of Special Civil Application No. 10678/2003 by registered post A.D. It is hoped that till the decision is taken, the property belonging to the

aforesaid petitioners is not demolished.

16. An additional copy of Special Civil Application No. 10678/2003 has been submitted by learned advocate Shri Harin Raval to this Court so that alongwith a copy of this order, the said copy of the petition can be forwarded to respondent no.1.

17. In view of the aforestated facts, the petitions are disposed of as not pressed. Rule is discharged with no order as to costs.

Direct service is permitted.

(A.R. DAVE J.)

siji